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In the Supreme Court of the United States

OCTOBER TERM, 1967

No. 380

PACIFIC GAS AND ELECTRIC COMPANY, SAN DIEGO GAS & ELECTRIC COMPANY, SOUTHERN CALIFORNIA GAS COMPANY and SOUTHERN COUNTIES GAS COMPANY OF CALIFORNIA,
Petitioners,

vs.

PHILLIPS PETROLEUM COMPANY, et al.,
Respondents.

Petition for a Writ of Certiorari to the United States Court of Appeals for the Tenth Circuit

FREDERICK T. SEARLS
MALCOLM H. FURBUSH
STANLEY T. SKINNER
Attorneys for Pacific Gas and Electric Company
245 Market Street
San Francisco, California 94106

SHERMAN CHICKERING
C. HAYDEN AMES
DONALD J. RICHARDSON, JR.
Attorneys for San Diego Gas & Electric Company
111 Sutter Street
San Francisco, California 94104

JOHN ORMASA
HARVEY L. GOTH
Attorneys for Southern California Gas Company Southern Counties Gas Company of California
P. O. Box 54790, Terminal Annex
Los Angeles, California 90017

SORG PRINTING COMPANY OF CALIFORNIA, 346 FIRST STREET, SAN FRANCISCO 94105

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Respondents.

Petition for a Writ of Certiorari to the United States Court of Appeals for the Tenth Circuit

Petitioners, Pacific Gas and Electric Company, San Diego Gas & Electric Company, Southern California Gas Company and Southern Counties Gas Company of California, pray that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Tenth Circuit, entered in the above case on April 18, 1967.[1]

1. The decision of the Court of Appeals involved four different petitions for review. The respondents to the petition, other than Phillips Petroleum Company, are Union Oil Company of California, Gulf Oil Corporation, and Mobil Oil Corporation.

CITATIONS TO OPINIONS BELOW

The Opinion of the Federal Power Commission is reported in 35 FPC 40, and is printed in Appendix A hereto, beginning at p. 1. The Opinion of the Court of Appeals is as yet unreported, and is printed in Appendix A hereto, beginning at p. 21.

JURISDICTION

The judgment of the Court of Appeals was entered on April 18, 1967. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1) and 15 U.S.C. § 717r(b).

QUESTION PRESENTED

Whether the Federal Power Commission, in a Natural Gas Act § 7 (15 U.S.C. § 717f) initial certificate proceeding involving producer rates in the Permian Basin may adopt as the "in-line" price its most recently determined applicable just and reasonable rate as prescribed in its Permian Basin area rate decision.[2]

STATUTE INVOLVED

The statutory provisions involved are sections 7 (15 U.S.C. § 717f), and 19 (15 U.S.C. §717r) of the Natural Gas Act. They are printed in Appendix B hereto, beginning at p. 27.

STATEMENT

This petition presents for review the decision by the Federal Power Commission (Commission) on the first producer certificate applications for the sale of gas from the Permian Basin following the decision by the Commission

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2. 34 FPC 159, as modified by 34 FPC 1068; appealed to USCA (Tenth Circuit), *Skelly Oil Company, et al. v. FPC*, 375 F.2d 6 (1967); *cert. granted*, ... U.S. ..... (1967).

in the Permian Basin area rate proceeding, Opinion Nos. 468 and 468-A (Permian).[3] The matter was heard by an examiner of the Commission more than two months after the issuance of the Commission's decision in Permian (August 5, 1965), and on January 6, 1966 the Commission issued permanent certificates of public convenience and necessity to the producer applicants which certificates were conditioned to a total initial price, including tax reimbursement, not greater than the applicable base area rate of 16.5¢/Mcf established in Permian. Such base area rate was also subjected to further reduction for gas quality deviations as prescribed in Permian.

Subsequently, the producer applicants appealed the Commission's decision on the grounds, among others, that the area rates were not properly applicable. The Court of Appeals granted the producers' petitions for review and rendered an opinion on April 18, 1967, refusing to decide the question of whether the area rate could be applied and remanding the cases to the Commission for further proceedings on the basis that: ". . . [T]he rates fixed by Opinion No. 484 and accompanying orders are disapproved because they are based entirely on the Permian area rates which we have rejected."

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3. This Court has before it for review the Permian Decision which the United States Court of Appeals, Tenth Circuit, reversed and remanded to the Commission. These cases, *Skelly Oil Co., et al., v. The Federal Power Commission*, are set for argument during the October, 1967 term.

REASONS FOR GRANTING THE WRIT

The court below in its opinion refused to decide whether an area rate established after extensive hearings may be adopted as the "in-line" price in a Natural Gas Act § 7 proceeding. The decision on this issue is essential to the orderly administration of producer rate regulation on an area basis under the Natural Gas Act.

If the Commission is unable to apply the area rate determined in proceedings under §§ 4 and 5 of the Natural Gas Act as the rate for sales authorized under § 7, the painstaking and time-consuming effort involved in area rate making will have little prospective application to new supplies of natural gas sold in interstate commerce. By not applying the area rate as the "in-line" price, § 7 proceedings would become a sieve through which excessive prices for new gas, not based on the just and reasonable standard established in the area rate proceedings, will be permitted to flow into interstate commerce. Common sense itself dictates that the Commission cannot reliably use any rate in excess of the area rate as a basis for an "in-line" determination for such a higher rate would in the Commission's opinion be unjust and unreasonable. It is therefore appropriate that the just and reasonable rate determined in an area rate proceeding under §§ 4 and 5 of the Natural Gas Act be used as the "in-line" rate if the consumer is to be afforded needed protection under the Natural Gas Act. (*Atlantic Ref. Co. v. Pub. Serv. Com. of New York*, 360 U.S. 378 (1959).)

CONCLUSION

The question presented herein is timely and of immense importance to the Commission's administration of its responsibility to regulate producer rates. In order that further delay in the establishment of a comprehensive and effective regulatory scheme may be prevented, we respectfully urge this court to grant this petition for a writ of certiorari.

Respectfully presented,

FREDERICK T. SEARLS
MALCOLM H. FURBUSH
STANLEY T. SKINNER
Attorneys for Pacific Gas and Electric Company
245 Market Street
San Francisco, California 94106

SHERMAN CHICKERING
C. HAYDEN AMES
DONALD J. RICHARDSON, JR.
Attorneys for San Diego Gas & Electric Company
111 Sutter Street
San Francisco, California 94104

JOHN ORMASA
HARVEY L. GOTH
Attorneys for Southern California Gas Company Southern Counties Gas Company of California
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(Appendices Follow)